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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

August 14, 2003

VIA U.S. MAIL & FACSIMILE (202/775-7253)

Mr. Cary H. Sherman
President
Recording Industry Association of America
1330 Connecticut Avenue, NW
Washington, D.C. 20036

Dear Mr. Sherman:

On Friday, August 8, 2003, I received copies of approximately 1,075 subpoenas that had been issued by the U.S. District Court for the District of Columbia at the behest of the Recording Industry Association of America (RIAA). This represents all of the subpoenas won by the RIAA since July 31, 2003. This morning I received narrative responses to questions that I posed to the RIAA in my July 31, 2003, Chairman's letter. I appreciate your timely and thoughtful response.

As you know, as a former prosecutor, I am concerned that the subpoena process established in the Digital Millennium Copyright Act (DMCA) could be subject to abuse. I believe that we have similar goals on this matter. While our means of achieving those goals may differ, I remain hopeful that we can find common ground that balances the rights of the industry and the consumer.

It is my steadfast belief that the recording industry has legitimate concerns about copyright infringement. From the inception of this inquiry, I have been deeply interested in protecting consumers' privacy rights. However, while individuals have an expectation of privacy, this does not give them a right to steal. The industry has every moral right to develop practical remedies for protecting its rights.

I believe the issue is one of proportionality. The punishment must fit the crime.

As Chairman of the Permanent Subcommittee on Investigations, I intend to assist in the development of remedies that will be reasonable and narrowly tailored to fit the extent of infringement.

Another issue that the Permanent Subcommittee on Investigations will review is the matter of criminalization of nominal file sharing. Legislative proposals designed to criminalize extensive file sharing have their place, but I am troubled that the "law of unintended consequences" might again be at work. Approaches that may involve heavy-

handed criminal sanctions could actually undermine many of the productive efforts of the recording industry, and cause undue harm to individuals.

Technology makes it easier than ever to take something that belongs to someone else. This does not make it right.

Technology, coupled with balanced civil and criminal law, should also make it easier to ensure that the rights of consumers and the industry are safeguarded and enhanced.

Again it is an issue of proportionality.

During the course of this investigation, the mechanics of how peer- to-peer networks operate have also come into question. For example, when using peer-to-peer networks, do unsuspecting users know that when they download their favorite music they are breaking the law and simultaneously opening their personal computer hard-drives to the rest of the world? By utilizing peer-to-peer networks, do consumers understand that they may make their personal and financial information available, exposing themselves to identity theft? Research indicates that 41% of those who download files over peer-to-peer networks are between the ages of 12 and 18. Do parents understand that the anonymity and complexity of the operation of these peer-to-peer networks enables their children access to uncensored files of unknown content?

It is my intention to hold hearings in the near future on all of these matters, including a review of criminal penalties for file-sharing and the consumer protection issues involved in the usage of peer-to-peer networks.

These hearings will be based upon the facts and evidence that the Subcommittee discovers during the investigation. I believe that a further discussion of the pros and cons of strategies designed to protect the industry's rights, and their impact on consumers, is something that will be both beneficial, and enlightening, to the public and policymakers.

Thank you again for your prompt response, and I look forward to continuing to work with you to ensure that we strike an appropriate balance between the rights of copyright holders and the privacy rights of the consumers.

Sincerely,


Norm Coleman
Chairman
Permanent Subcommittee on Investigations

cc: Senator Carl Levin, Ranking Minority Member
Permanent Subcommittee on Investigations